

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ORDER
07-CV-27S

M. PATRICIA SMITH, Commissioner
of Labor of the State of New York, et al.,

Defendants.

Upon review of Plaintiff United States' Omnibus Motion for Entry of Default Judgment and Distribution of Funds Held in the Registry of the Court (Docket Entry No. 114), the Clerk of the Court made an Entry of Default as to the following defendants as indicated below.

As to the Worker's Compensation Board, New York State Department of Taxation and Finance, New York State Unemployment Insurance, City of Buffalo Division of Parking Enforcement, City of Buffalo Department of Street Sanitation, and City of Buffalo Department of the Treasury (collectively "Group One Defendants") the Clerk made an Entry of Default on May 1, 2008. (Docket Entry No. 90.)

As to the City of Buffalo (hereinafter Group Two Defendants") the Clerk made an Entry of Default on May 9, 2008. (Docket Entry No. 94.)

As to Sharon Ball, Latrenda Bush, Flora Coleman, Nafeesah Habeeb, Shawn Jones, Oluwatosin Kolade, Bettye Lee, Sonja Lee, Regina Moody, Rose Mooney, Jessica Rhooms, Gail Shirley, Geraldine Talley, Monica Taylor, Donald Urban, Charles Walker, Geraldine Wright,

National Benefit Life Insurance Company, Lillian Pace, Lorrie Hill, Verizon, Angel Wright, Karen Smith, and Lillie Washington (collectively “Group Three Defendants”) the Clerk made an Entry Of Default on July 3, 2008. (Docket Entry No. 104.)

As to Keonta Banks, Denise Bell, Simone Bennett, Xaviera Beverly, Darlene Blackmon-Williams, Rita Blair, John Bridges, Joseph Brown, Sharon Brown, Amanda Craig, Claudette Davis, Jimmie Davis, Ronald Deputy, Neal Dobbins, Vernon Duncan, Cynthia Earsing, Christine Faison, Rochelle Hardaway, Latesha Hinson, Lonnie Jackson, Kasandra Jenkins, Belinda Johnson, Della Johnson, Kenneth Johnson, Mary L. Johnson, Mary Jones, Derrick Kennedy, Yvonne Kirkland, Adrian Lane, Jeneria Lane, Evelyn Lockett, Rhonda Maclin, Tiffany Mallory, Victoria McCants, Terrence McKelvey, Deborah Medley, Jacqueline Mines, Joshua Minor, III, Christopher Mitchell, Beverly Newkirk, Kenneth Norman, Jesse Overton, Louise Owens, Lawrence Paisley, Donna Ray, Katherine Reed, Charles Riley, Michael Robinson, Delia Rodgers, Cathy Simmons, Gladys Simmons-Beckham, Lakeisha Spencer, Connie Spentz, Sylvia Volk, Anthony Washington, Lillie Washington, Regina Wiggins, Theresa Wilkins, Lamont Williams, AAA Computer Products, Adelphia, Accounting Associates, Inc., Bank of America, Broadview Networks, Buffalo Water Board, Choice One Communications, Federal Express, Ford Motor Credit Company, Image Cycle Technologies, International Publishing Services, Lexis/Nexis, Matthew Bender & Co., The Maunz Co, Inc., McBee Systems, Mountain Valley Water Co., National Grid, Nextel Partners, Philadelphia Indemnity Insurance Co., Philadelphia Insurance Companies, Pitney Bowes, Progressive Business Publications, and United Business Systems (collectively “Group Four Defendants”) the Clerk made an Entry Of Default on July 29, 2008. (Docket Entry No. 110.)

According to the United States' Amended Complaint, the United States named the Group One Defendants, Group Two Defendants, Group Three Defendants, and Group Four Defendants (collectively "the Defaulted Defendants") as parties to this action based on the government's belief that they may claim an interest in the Stake upon which the United States seeks to foreclose its federal tax liens. The Defaulted Defendants did not file an answer to the government's complaint. As a result, the United States moves to enter default judgment against the Defaulted Defendants and asserts that they should be awarded nothing with respect to the distribution of the funds deposited in the Registry of the Court.

It is **ORDERED**, that the government's request for entry of judgment of default against the Defaulted Defendants (Docket Entry No. 114) is GRANTED without objection. See Fed. R. Civ. P. 55(b)(2). Any claims by the Defaulted Defendants' with respect to the distribution of the funds deposited in the Registry of the Court are extinguished.

It is **FURTHER ORDERED**, that because all other defendants in this matter have been terminated (Docket Entry Nos. 24, 101 and 105) or, in the case of defendant M. Patricia Smith, Commissioner of Labor of the State of New York, have agreed pursuant to a stipulation that the United States' federal income tax liens have priority over any liens or claims alleged by her (Docket Entry No. 112), the United States' request for distribution of funds held in the Registry of the Court (Docket Entry No. 114) is GRANTED without objection;

It is **FURTHER ORDERED**, that the federal income tax liens of plaintiff United States of America are paramount and attach to funds held in the Registry of the Court in the amount of \$143,227.39, plus certain interest;

It is **FURTHER ORDERED**, that from the funds paid into the Registry of the Court, the

Clerk of the Court is directed to instruct First Niagara Bank, this Court's designated depository, to close the account for the above-referenced case and issue a bank draft payable to the Clerk, U.S. District Court, equal to the sum of 10% of the interest earned while the funds were held. This fee is to be paid to the Treasury of the United States in accordance with law;

It is **FURTHER ORDERED**, that the Clerk of the Court is directed to instruct First Niagara Bank to issue and deliver to the Office of the Clerk of the Court a check payable to the "United States Treasury" in the amount of the remaining balance of the account (the principal and remaining interest);

It is **FURTHER ORDERED**, that the Clerk of the Court shall mail the check made payable to the "United States Treasury" to plaintiff United States in care of attorney Lisa L. Bellamy, at the following address: Tax Division Financial Litigation Unit (FLU), United States Department of Justice, P.O. Box 310, Ben Franklin Station, Washington, D.C. 20044-0310;

It is **FURTHER ORDERED**, that all claims asserted in the above-captioned case are resolved by this judgment entry; and

It is **FURTHER ORDERED**, that the Clerk of the Court shall close this case.

SO ORDERED.

Dated: September 15, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
UNITED STATES DISTRICT JUDGE